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6 Attorneys for Defendant
Cavalry SPV I, LLC
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 DORIS GEWARGIS,

12 Plaintiff,

13
14 vs.

15 CAVALRY SPV I LLC,

16 Defendant.
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CASE NO.: 5:17-cv-6493

NOTICE OF REMOVAL

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Cavalry SPV I, LLC (“Defendant”)
3 hereby removes to this Court the state court action described below.

4 1. On September 19, 2017, a complaint was filed against Defendant by
5 plaintiff Doris Gewargis (“Plaintiff”), in the Superior Court of the State of California
6 in and for the County of Santa Clara, in an action styled as *Doris Gewargis v.*
7 *Cavalry SPV I LLC*, case number 17CV316060. A copy of the complaint
8 (“Complaint”) and all other documents that were served on Defendant are attached
9 hereto as **Exhibit A**.

10 2. This removal petition is timely under 28 U.S.C. § 1446(b) because
11 Defendant was served with the Complaint on October 13, 2017.

12 3. This action is a civil action of which this Court has original jurisdiction
13 under 28 U.S.C. §§ 1331, and that may be removed to this Court by Defendant
14 pursuant to the provisions of 28 U.S.C. § 1441(a), because the Complaint asserts
15 claims against Defendant arising under the Fair Debt Collection Practices Act, 15
16 U.S.C. § 1692, *et seq.* See Ex. A (Complaint) at ¶¶ 27-31.

17 4. The Complaint was filed in the Superior Court of the State of California,
18 County of Santa Clara. Venue in the Northern District is proper. See 28 U.S.C. §
19 1441(a) (providing for removal “to the district court of the United States for the
20 district and division embracing the place” where the state court action is pending); *id.*
21 § 84(a) (“The Northern District comprises . . . Santa Clara”).

22 5. Defendant is represented by the undersigned.

23 DATED: November 8, 2017

SIMMONDS & NARITA LLP
R. TRAVIS CAMPBELL
RISHI GUPTA

26 By: /s/Rishi Gupta
Rishi Gupta
Attorneys for Defendant
Cavalry SPV I, LLC

Exhibit A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Scott Maurer 180830 KGACLC 1030 The Alameda San Jose, CA 95126 TELEPHONE NO.: (408) 288-7030 FAX NO. (Optional): (408) 288-3575 E-MAIL ADDRESS (Optional): smaurer@scu.edu ATTORNEY FOR (Name): Doris Gewargis		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, Ca 95113 BRANCH NAME: Unlimited		
PETITIONER/PLAINTIFF: DORIS GEWARGIS RESPONDENT/DEFENDANT: CAVALRY SPV I LLC		
PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL		CASE NUMBER: 17 cv316060

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
ALEXANDER COMMUNITY LAW CENTER
1030 The Alameda
San Jose, CA 95126
3. On (date): 9/25/2017 I mailed from (city and state): San Jose, CA
the following documents (specify):
Summons
Complaint
ADR Package
(2) Notice and Acknowledgement of Receipt - Civil
☐ The documents are listed in the Attachment to Proof of Service by First-Class Mail - Civil (Documents Served)
(form POS-030(D)).
4. I served the documents by enclosing them in an envelope and (check one):
 - a. ☐ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. ☒ placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
 - a. Name of person served: C T CORPORATION SYSTEM (C0168406)
 - b. Address of person served:
500 Summit Lake Drive STE 400
Vahalla, NY 10595

 The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail-Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 9/25/2017

Simone E Chambliss
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): — Scott Maurer 180830 KGACLC 1030 The Alameda San Jose, CA 95126 TELEPHONE NO.: (408) 288-7030 FAX NO. (Optional): (408) 288-3575 E-MAIL ADDRESS (Optional): smaurer@scu.edu ATTORNEY FOR (Name): Doris Gewargis	FOR COURT USE ONLY
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PLAINTIFF/PETITIONER: DORIS GEWARGIS DEFENDANT/RESPONDENT: CAVALRY SPV I LLC	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT - CIVIL	CASE NUMBER: 17 cv316060

TO (insert name of party being served): C T CORPORATION SYSTEM (C0168406)

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: 9/25/2017

Simone E Chambliss
 (TYPE OR PRINT NAME)

(SIGNATURE OF SENDER-MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- ☒ A copy of the summons and of the complaint.
- ☒ Other (specify):
 ADR Package

(To be completed by recipient):

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
 ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
 ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Scott Maurer 180830 KGACLC 1030 The Alameda San Jose, CA 95126 TELEPHONE NO.: (408) 288-7030 FAX NO. (Optional): (408) 288-3575 E-MAIL ADDRESS (Optional): smaurer@scu.edu ATTORNEY FOR (Name): Doris Gewargis		FOR COURT USE ONLY
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PLAINTIFF/PETITIONER: DORIS GEWARGIS DEFENDANT/RESPONDENT: CAVALRY SPV I LLC		
NOTICE AND ACKNOWLEDGMENT OF RECEIPT - CIVIL		
		CASE NUMBER: 17 cv316060

TO (insert name of party being served): C T CORPORATION SYSTEM (C0168406)

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If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: 9/25/2017

Simone E. Chambliss
(TYPE OR PRINT NAME)


(SIGNATURE OF SENDER-MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- ☒ A copy of the summons and of the complaint.
- ☒ Other (specify):
ADR Package

(To be completed by recipient):

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

S U M M O N S
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
CAVALRY SPV I LLC

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**ENDORSED
FILED**

SEP 19 2017

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY A. Hwang DEPUTY

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):
DORIS GEWARGIS

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court Of California
191 N. First Street
San Jose, Ca. 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Scott Maurer 180830 Alexander Community Law Center
1030 The Alameda 408-288-7030
San Jose, CA 95126

CASE NUMBER
(Número del Caso):

17 CV316060

DATE:
(Fecha) **SEP 19 2017**

Clerk, by
(Secretario)

A. Hwang, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):
under:

- ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

FILED

SEP 19 2017

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY A. Hwang DEPUTY

1 Scott Maurer (CSB # 180830)
2 ALEXANDER COMMUNITY LAW CENTER
3 1030 The Alameda
4 San Jose, CA 95126
5 Phone: (408) 288-7030
6 Fax: (408) 288-3581
7 smaurer@scu.edu

8 Attorney for Plaintiff, Doris Gewargis

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SANTA CLARA

11 (Unlimited Jurisdiction)

12 DORIS GEWARGIS,

13 Plaintiff,

14 v.

15 CAVALRY SPV I LLC,

16 Defendant.

17) Case No.: 17 CV316060

18) COMPLAINT:

19) (1) TO SET ASIDE JUDGMENT FOR
20) IMPROPER SERVICE

21) (2) FOR VIOLATIONS OF THE
22) CALIFORNIA ROSENTHAL ACT,
23) CALIFORNIA CIVIL CODE § 1788 *et*
24) *seq.*

25) (3) FOR VIOLATIONS OF THE
FEDERAL FAIR DEBT
COLLECTION PRACTICES ACT, 15
U.S.C. § 1692 *et seq.*

26 INTRODUCTION

- 27 1. This is an action brought by Plaintiff Doris Gewargis (hereinafter MS. GEWARGIS) to set
28 aside a judgment for improper service (i.e., a 'collateral attack' action). MS. GEWARGIS is
29 a sixty year old woman of modest means who was sewer served in a prior action filed in this

1 court. The default judgment was obtained by alleged personal service of MS. GEWARGIS.
2 MS. GEWARGIS notified Defendant herein of the falsity of the Proof of Service underlying
3 the judgment in the prior action, yet Defendant refuses to stipulate to set aside the judgment,
4 leaving MS. GEWARGIS with no choice but to file the instant suit.

5 2. The following paragraphs are alleged upon information and belief: 6, 20, 23-25, 28 & 31.

6
7 **JURISDICTION AND VENUE**

8 3. Jurisdiction is proper in California pursuant to Cal. Code of Civil Procedure § 410.10 on the
9 basis that Defendants caused an effect in California by an act or omission elsewhere, and
10 have, and have had, other relationships to California which make the exercise of jurisdiction
11 reasonable.

12 4. Venue is proper in Santa Clara County pursuant to Cal. Code of Civil Procedure § 395(b) and
13 Cal. Civil Code § 2984.4(a) because this is the County in which MS. GEWARGIS resides
14 and where the judgment in the prior action was entered.
15

16 **PARTIES**

17 5. Plaintiff DORIS GEWARGIS is a natural person who currently resides in the city of San
18 Jose, California located in Santa Clara County.

19 6. Defendant CAVALRY SPV I LLC (hereinafter CAVALRY) is a New York corporation
20 whose principal place of business is located in Valhalla, New York.
21

22 **FACTS**

23 7. MS. GEWARGIS lives and has been living, at all relevant times, at 7048 Hollow Lake Way,
24 San Jose, CA 95120.
25

- 1 8. On or about June 24, 2011, CAVALRY sued MS. GEWARGIS in the Unlimited Civil
2 Division of the Santa Clara County Superior Court, Case NO. 112CV216626 (hereinafter
3 "the Prior Action").
- 4 9. On February 3, 2012 CAVALRY filed a Proof of Service of Summons. The Proof of Service
5 indicates that service was by "personal service" whereby the declarant and process server,
6 Kris Vorsatz, gave the documents to MS. GEWARGIS at 7048 Hollow Lake Way, San Jose,
7 CA 95120 on January 29, 2012.
- 8 10. MS. GEWARGIS never received these documents from Kris Vorsatz, and as a result did not
9 receive any actual notice of the Prior Action.
- 10 11. On April 25, 2012, a judgment was issued in favor of CAVALRY against MS. GEWARGIS
11 in the amount of \$47,819.52.
- 12 12. MS. GEWARGIS did not learn about the Prior Action or anything related to the litigation
13 until in or around December of 2015, when CAVALRY levied money from two bank
14 accounts of MS. GEWARGIS.
- 15 13. On June 6, 2017, MS. GEWARGIS - through the undersigned - notified CAVALRY that
16 service at 7048 Hollow Lake Way was invalid because MS. GEWARGIS did not receive the
17 documents and provided CAVALRY evidence of Kris Vorsatz's documented history of
18 engaging in sewer service.
- 19 14. As of April 3, 2017, CAVALRY knew or should have known that service of process had not
20 legally been affected, yet CAVALRY refused and refuses to set aside the judgment.

22 **FIRST CAUSE OF ACTION**

23 (Addressed to the Court's inherent powers to set aside a judgment)

- 24 15. Plaintiff alleges and incorporates by reference all previous paragraphs as though fully set
25 forth herein.

1 16. MS. GEWARGIS was never properly served with the complaint.

2 17. The Court in the Prior Action never obtained jurisdiction over MS. GEWARGIS, the
3 Plaintiff herein.

4 18. Principles of equity and the Due Process Clause of the Fifth Amendment of the United States
5 Constitution require the prior judgment be declared void.

6 **SECOND CAUSE OF ACTION**

7 (Violation of California Rosenthal Act; Cal. Civil Code § 1788 *et seq.*)

8 19. Plaintiff alleges and incorporates by reference all previous paragraphs as though fully set
9 forth herein.

10 20. CAVALRY is a “debt collector” as defined by Cal. Civil Code § 1788.2(c).

11 21. MS. GEWARGIS is a “debtor” as defined by Cal. Civil Code § 1788.2(h).

12 22. The judgment in the prior action was obtained on a ‘consumer credit transaction’ within the
13 meaning of 15 USC §1788.2(e).

14 23. CAVALRY violated Cal. Civil Code § 1788.15(a) by attempting to collect a debt by means
15 of judicial proceedings when it knew that service of process had not been legally effected.

16 24. CAVALRY violated Cal. Civil Code § 1788.17 by violating the incorporated provisions of
17 the Federal Fair Debt Collection Practices Act, including but not limited to 15 U.S.C. § 1692f
18 by attempting to collect a debt when it knew that judgment had been obtained through
19 improper service.
20

21 25. CAVALRY committed the foregoing violations willfully and knowingly.

22 26. Principles of law require CAVALRY to pay statutory damages to MS. GEWARGIS.

23 ///

24 ///

25 ///

THIRD CAUSE OF ACTION

(Violation of the Federal Fair Debt Collection Practices Act; 15 U.S.C. § 1692 *et seq.*)

27. Plaintiff alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

28. CAVALRY is a 'debt collector' within the meaning of 15 U.S.C. § 1692a(6).

29. DORIS GEWARGIS is a "consumer" as defined by 15 USC §1692a(3).

30. The alleged obligation underpinning the judgment in the prior action is a "debt" as defined by 15 U.S.C. §1692a(5).

31. CAVALRY violated the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692f, by attempting to collect a debt when it knew that the judgment had been obtained through improper service.

PRAYER FOR RELIEF

32. Plaintiff respectfully prays that this court:

With respect to First Cause of Action

- a. Declare the judgment in the Prior Action to be void and set aside the default;
- b. dismiss the prior action pursuant to the provisions of Cal. CCP §§583.210(a) and 583.250(b);
- c. issue a temporary restraining order, and issue preliminary and permanent injunctions to stop the enforcement of the judgement in the Prior Action; and
- d. award Plaintiff such other and further relief as the court deems proper.

With respect to Second Cause of Action (Violation of Cal. Civil Code § 1788)

- a. Award actual damages in an amount to be proven at trial pursuant to Cal. Civil Code § 1788.17 and § 1788.30(a);

- b. award statutory damages of \$1,000 pursuant to Cal. Civil Code § 1788.17;
- c. award statutory damages of \$1,000 pursuant to Cal. Civil Code § 1788.30(b);
- d. award Plaintiff attorney's fees and costs pursuant to Cal. Civil Code § 1788.30(c); and
- e. award Plaintiff such and other further relief as the court may deem proper.


With respect to Third Cause of Action (Violation of the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.)

- a. Award actual damages in an amount to be proven at trial pursuant to 15 U.S.C. § 1692k(a)(1);
- b. award statutory damages of \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2);
- c. award Plaintiff attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3); and
- d. award Plaintiff such and other further relief as the court may deem proper.

Respectfully submitted,

KATHARINE AND GEORGE ALEXANDER
COMMUNITY LAW CENTER

Dated Sept. 5, 2017



Scott Maurer, Supervising Attorney

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
 191 North First St., San José, CA 95113

CASE NUMBER: **17 CV316060**

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courts.ca.gov/forms.htm and www.courts.ca.gov/rules.htm
- Local Rules and Forms: www.scscourt.org

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Mary E. Arand Department: 9

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: JAN - 9 2018 Time: 1:30pm in Department: 9

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.scscourt.org or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SAN JUAN CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

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Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

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